STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, et al.,

REBECCA HARPER, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

Consolidated with
21 CVS 500085

MOTION FOR CLARIFICATION, AND IN THE ALTERNATIVE, MOTION TO COMPEL

NOW COME President *Pro Tempore* Philip E. Berger, Senator Warren Daniel, Senator Paul Newton, and Speaker Timothy K. Moore (collectively, "Legislative Defendants"), by and through undersigned counsel, and pursuant to the Orders entered by this Court on November 30, 2021 and December 20, 2021 and Rules 26, 30, and 37 of the North Carolina Rules of Civil Procedure, respectfully move this court for an order clarifying whether its order granting pro hac vice status to Sam Hirsch ("Hirsch") allows Legislative Defendants to obtain deposition and trial testimony of him without a subpoena as he is now a fact witness in this matter. Alternatively, Legislative Defendants request that the Court compel Hirsch to appear and testify in this matter—both in a noticed deposition and at trial. In support of this motion, Legislative Defendants respectfully submit the following:

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INTRODUCTION

NCLCV Plaintiffs came to Court alleging that "Plaintiffs have harnessed the power of high-performance computers, and employed cutting-edge computational methods and resources, to draw" what they term their "Optimized Maps." Verified Compl. ¶ 154. They claim they did so with the goal of "ensuring fair representation for all North Carolinians." *Id.* at ¶ 2. And throughout this case, NCLCV Plaintiffs have offered their Optimized Maps for two express purposes: (1) as evidence the General Assembly engaged in partisan gerrymandering and racial vote-dilution in crafting the 2021 plans and (2) as benchmark plans to either serve as a remedial plan, or else as the benchmark for another remedial plan, in this case. *Id.* at ¶ 155-57, Prayer for Relief at ¶ f.

Unacceptably, however, NCLCV Plaintiffs have fought at every turn to conceal the details of the "Optimized Maps" that are central to their claims. First, they refused to timely produce all source code, source data, input parameters, and all outputted data pertaining to the expert reports produced to Legislative Defendants during the preliminary-injunction phase. Then, and only after an order from this Court, they provided the source code and like information—and then also revealed, in a December 23, 2021, cover letter they *also* marked "Confidential" (to shield it from public view), that their attorney, Sam Hirsch "directed the drawing and computerized production of" the Optimized Maps. *See* **Exhibit A.**[1] And although the December 23 letter describes to some extent the computer algorithm used, NCLCV Plaintiffs have also admitted to human involvement playing a role in the creation of the Optimized Maps. The Optimized Maps are central to NCLCV

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[1] After the Court ordered NCLCV Plaintiffs produce information relating to their Optimized Maps, counsel now claims that they only intend to rely on these maps as demonstratives. (*See* December 23, 2021 Letter, p. 2). This new contention is at odds with the face of NCLCV Plaintiff's Verified Complaint, which heavily relies on the Optimized Maps to allege the Enacted Plans are extreme partisan gerrymanders and racially vote-dilutive. *See* NCLCV Verified Complaint, ¶¶ 7, 9, 93, 94, 96–97, 99, 104(a), 105(b), 108–09, 113, 118–119, 121–23, 125, 137–138, 140, 144(a), 145(b), 146(c), 147, 149, 153–80, 189–90. NCLCV Plaintiffs also proposed the Optimized Maps as a remedy in this case. NCLCV Motion for Preliminary Injunction, ¶ 7(a). This position is further undermined by the report of their expert, Dr. Duchin, whose opinions derive from a comparison between the Enacted Plans and the "Optimized Maps."

Plaintiffs' claims, and thus Legislative Defendants have no choice but to depose Hirsch to ensure a proper defense, without prejudice.

BACKGROUND

The NCLCV Plaintiffs filed their Verified Complaint and Motion for Preliminary Injunction on November 16, 2021, challenging North Carolina's 2021 Congressional, House, and Senate Plans under the Free Elections, Equal Protection, Free Speech, and Free Assembly Clauses of the North Carolina Constitution. The Verified Complaint contends that "[t]his suit is about harnessing the power of mathematics and computer science to identify and remedy the severe constitutional flaws in the redistricting maps recently enacted by the North Carolina General Assembly." *NCLCV* Compl. ¶ 1. Accordingly, in their Motion for Preliminary Injunction, the NCLCV Plaintiffs sought as a remedy the adoption of alleged "Optimized Maps" in the event that the North Carolina General Assembly did not adopt new redistricting plans that remedied the constitutional violations alleged by the NCLCV Plaintiffs. *See* NCLCV Motion for Preliminary Injunction, ¶ 7(a). Contemporaneously with the Verified Complaint and Preliminary Injunction Motion, NCLCV Plaintiffs filed the Affidavit of Dr. Moon Duchin, analyzing the Enacted Plans in comparison to the Optimized Plans to support their allegations of "constitutional flaws" in the Enacted Plans. At the preliminary injunction hearing, counsel for NCLCV Plaintiffs acknowledged human intervention, in addition to computer algorithms, in crafting the Optimized Maps. The nature and extent of this human intervention, however, was not disclosed.

On December 3, 2021, this Court denied the preliminary injunction sought by the NCLCV Plaintiffs. Subsequently, on December 8, 2021, the Supreme Court of North Carolina granted a preliminary injunction to stay candidate filing periods, delay primaries, and expedite the trial of this matter, presumably in reliance in part on the analysis set forth by NCLCV Plaintiffs'

Optimized Maps, concluding that "the great public interest in the subject matter of these cases" and their "importance . . . to the constitutional jurisprudence of this State" justified extraordinary relief. December 8, 2021 Supreme Court Order at 3.

On December 20, 2021, this Court ordered NCLCV Plaintiffs to "produce to the Legislative Defendants the method and means by which the Optimized Maps were formulated and produced, including, but not limited to all source code, source data, input parameters, and all outputted data associated with the Optimized Maps," and to "further identify any and all persons who took part in drawing or participated in the computerized production of the Optimized Maps."

In a letter dated December 23, 2021 served upon Legislative Defendants, counsel for NCLCV Plaintiffs outlined and minimized the process by which its "Optimized Maps" were drawn. *See* **Exhibit A**. NCLCV Plaintiffs, however, designated the entirety of this letter and the documents produced with it as "Confidential" under a Protective Order issued by this Court on December 15, 2021. The letter makes clear that one person oversaw, directed, and instructed the creation of NCLCV Plaintiffs' Optimized Maps: Sam Hirsch. *Id.* at p 3. NCLCV Plaintiffs concurrently served a new expert report from Dr. Duchin which was grounded in a comparison between the enacted plans and the "Optimized Maps" to formulate her opinions that the plans were partisan gerrymanders and were dilutive of the votes of the State's Black voters. Duchin Rep. at 3. Dr. Duchin will be the sole witness to testify "live" at trial on NCLCV Plaintiffs' behalf.

Given this explicit identification of Hirsch as the creator of the so-called Optimized Maps, Legislative Defendants immediately recognized the need to take Hirsch's deposition and include him as a potential trial witness. Legislative Defendants served a Notice of Deposition on Hirsch on December 27, 2021 for a virtual deposition before the close of the discovery period in this case on December 31, 2021.

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NCLCV Plaintiffs responded on December 28, 2021, in pertinent part, by claiming first that a notice of deposition was deficient procedurally because Mr. Hirsch is not a party to the case. NCLCV Plaintiffs also claimed that "taking Mr. Hirsch's deposition is neither necessary nor appropriate. Depositions of a party's litigation counsel are granted only in extraordinary circumstances, which this is not." These claims are without merit.

ARGUMENT

I. Hirsch is subject to the civil jurisdiction of this court and thus this Court should clarify that a notice of deposition is sufficient means to seek testimony from Mr. Hirsch.

On November 30, 2021, this Court granted Hirsch's motion to appear via pro hac vice admission in this matter. The Court conditioned it Order on Hirsch being "subject to and amenable to the disciplinary action and civil jurisdiction of the General Court of Justice and of the North Carolina State Bar." Given the scheduling deadlines and highly expedited nature of this case, Legislative Defendants now seek clarification as to whether a notice of deposition is sufficient means to proceed upon the deposition of Hirsch, who has already submitted to this Court's civil jurisdiction. Under these extraordinary circumstances, requiring an out of state, third-party subpoena to depose Hirsch is unreasonable and will prejudice Legislative Defendants' ability to timely complete discovery into matters central to their defense. Therefore, Legislative Defendants respectfully request the Court confirm that the Notice of Deposition they issued to Hirsch is sufficient to require his appearance for a deposition.

II. The deposition of Hirsch is necessary and appropriate as he, and only he, has factual information essential to the proper adjudication of this matter.

NCLCV Plaintiffs do not dispute that Sam Hirsch has relevant information reasonably calculated to lead to the discovery of admissible evidence. Instead, NCLCV Plaintiffs claim that oral testimony from Hirsch is somehow not necessary. However, the deposition of Hirsch is

relevant, necessary, and crucial to Legislative Defendants' defense. Even though Hirsch is litigation counsel for NCLCV Plaintiffs, he is also, based on their own disclosure, the person who directed the creation of the Optimized Maps.

North Carolina courts have ruled that litigation counsel may be deposed "where the party seeking to take the deposition has shown that (1) no other means exist to obtain the information than to depose opposing counsel; (2) the information sought is relevant and nonprivileged [sic]; and (3) the information is crucial to the preparation of the case." *Blue Ridge Pediatric & Adolescent Medicine, Inc. v. First Colony Healthcare, LLC*, No. 11 CVS 127, 2012 WL 3249553, at *7 (N.C. Super. Ct. Aug. 9, 2012) (quoting *Shelton v. American Motors Corp.*, 805 F.2d (8th Cir. 1986)); *accord Edison v. Acuity Healthcare Holdings, Inc.*, No. 15 CVS 2745, 2016 WL 6518800, at *3 (N.C. Super. Ct. Nov. 2, 2016) (allowing the deposition of in-house counsel to factual matters outside of her employer's litigation strategy). For example, counsel may be deposed when necessary to discover facts underlying certain allegations. *See Green v. Moog Music, Inc.*, No. 121CV00069MOCWCM, 2021 WL 4130530, at *2 (W.D.N.C. Sept. 10, 2021) (disqualifying Plaintiff's counsel in part and noting Plaintiff's counsel would likely need to be deposed as to an underlying event relied upon in the complaint that the attorney was present for). "A witness's testimony is 'necessary' within the meaning of the rule when it is relevant, material, and unobtainable by other means." *USA v. Wells*, No. 3:19-CR-00180-RJC-DSC, 2019 WL 6040785, at *2 (W.D.N.C. Nov. 14, 2019) (citing *State v. Smith*, 749 S.E.2d 507, 510 (N.C. Ct. App. 2013) (internal quotation marks and citation omitted)); North Carolina State Bar, 2011 Formal Ethics Opinion 1 ("It is generally agreed that when the anticipated testimony is relevant, material, and unobtainable by other means, the lawyer's testimony is 'necessary'")."

The plain face of the record in this matter shows that Hirsch's involvement in the creation of the Optimized Maps is "relevant, material, and unobtainable by other means." Hirsch's active leadership and personal involvement in the creation of the Optimized Maps is central to NCLCV Plaintiffs' claims. This is evident not only in the NCLCV Plaintiffs' pleadings, which constantly reference the Optimized Maps, but also in the prior orders of this Court, to wit: On December 20, 2021, this Court ordered NCLCV Plaintiffs to "produce to the Legislative Defendants the method and means by which the Optimized Maps were formulated and produced, including, but not limited to all source code, source data, input parameters, and all outputted data associated with the Optimized Maps," and to "further identify any and all persons who took part in drawing or participated in the computerized production of the Optimized Maps." This Court has already recognized this information as relevant and material. Moreover, Hirsch has access to information entirely unobtainable by any other means: only Hirsch knows his thought process about his mapdrawing actions regarding the composition and creation of the "Optimized Maps" that are directly relevant and integral to NCLCV Plaintiffs' Verified Complaint. *See* NCLCV Verified Complaint, ¶¶ 7, 9, 93, 94, 96–97, 99, 104(a), 105(b), 108–09, 113, 118–119, 121–23, 125, 137–138, 140, 144(a), 145(b), 146(c), 147, 149, 153–80, 189–90. Hirsch is not only subject to being deposed in this matter, but potentially subject to disqualification as counsel for NCLCV Plaintiffs. *See* N.C. Rules of Professional Conduct, Rule 3.7. As counsel for plaintiffs, Hirsch cannot be both responsible for creating evidentiary "proof" for Plaintiffs' claims and also seek to shield that work from disclosure due to his role as counsel; lawyers create arguments, not evidence.

III. The information sought from Hirsch is nonprivileged as it involves his role as mastermind and director of the creation of the Optimized Maps.

In North Carolina, the attorney-client privilege protects certain communications between an attorney and a client when five elements are all present: "(1) the relation of attorney and client

existed at the time the communication was made, (2) the communication was made in confidence, (3) the communication relates to a matter about which the attorney is being professionally consulted, (4) the communication was made in the course of giving or seeking legal advice for a proper purpose, although litigation need not be contemplated and (5) the client has not waived the privilege." *In re Miller*, 357 N.C. 316, 335, 584 S.E.2d 772, 786 (2013) (quoting *State v. McIntosh*, 336 N.C. 517, 523, 444 S.E.2d 438, 442 (1994)). To properly avoid disclosing the information sought by Legislative Defendants – and ordered to be produced by this Court – via a claim of attorney-client privilege, NCLCV Plaintiffs are required to show that all five of these elements were present at the time that Hirsch directed the creation of the Optimized Maps. *See id.* NCLCV Plaintiffs have not and cannot meet this burden because (1) the Optimized Maps were not made in the course of Hirsch's giving legal advice, and (2) the NCLCV Plaintiffs have waived any privilege applicable to the Optimized Maps by extensively referencing them in public pleadings. *See id.*

A. The Optimized Maps were not created in the course of an attorney-client relationship.

Communications with an attorney acting outside the scope of his representation are not protected by the attorney-client privilege. *Baldus v. Brennan*, No. 11-CV-1011 JPS-DPW, 2011 WL 6122542, at *1 (E.D. Wis. Dec. 8, 2011), *order clarified*, No. 11-CV-1011 JPS-DPW, 2011 WL 6385645 (E.D. Wis. Dec. 20, 2011). In *Baldus v. Brennan*, an attorney had assisted in drawing redistricting maps. *Id.* When litigation eventually commenced regarding the maps, an opposing party served the attorney with discovery requests seeking documents and evidence relative to his assistance in drafting the maps. *Id.* The attorney responded in a motion to quash by, in part, claiming that the subpoenaed information was protected by the attorney-client privilege. *Id.* The Court disagreed, noting that it was "apparent that attorney-client privilege ha[d] no application to the communications between the Legislature and [the attorney]. To be sure, the attorney-client

privilege protects communications made from a client to an attorney who is acting as an attorney but does not cover communications seeking only consulting services." *Id.* The Court reasoned that, since the attorney was not acting as a representative of the parties but was instead acting as a "consultant," his communications were not covered by the attorney-client privilege. *Id.* Other jurisdictions have similarly found, in redistricting cases, attorneys who direct the drawing of maps do so in a political consulting, not a legal representative, fashion. *See, e.g., Ohio A. Philip Randolph Institute v. Smith*, No. 1:18-cv-00357, ECF No. 121 (W.D. Ohio, Dec. 15, 2018) (granting plaintiffs' motion to compel compliance with subpoenas served on an attorney after finding his communications with individuals whom he was both representing and helping draw redistricting maps were not protected by the attorney-client privilege).

In the case *sub judice*, Hirsch was acting as a consultant and thus became a fact witness when directing the creation of the Optimized Maps; he was clearly not acting as an attorney giving the NCLCV Plaintiffs legal advice. This dichotomy is important. Legislative Defendants are not seeking information regarding Hirsch's advice to his clients regarding case strategy. Nor are Legislative Defendants seeking insight into NCLCV Plaintiffs' litigation tactics. Rather, Legislative Defendants are seeking information relative to Hirsch's creation of evidentiary "proof" in this matter, namely the "Optimized Maps." The timing of Hirsch's involvement further supports these distinctions. The General Assembly passed the Enacted Plans on November 4, 2021. A mere twelve (12) days later, on November 16, 2021, NCLCV Plaintiffs filed their Verified Complaint and Motion for Preliminary Injunction, referencing and relying on the Optimized Maps, and Dr. Duchin's analysis of the same, for emergency relief. Though NCLCV Plaintiffs do not indicate in their December 23 letter the date(s) on which Hirsch directed the creation and production of the Optimized Maps, it is almost impossible to complete such detailed analysis

within that time—let alone create the Optimized Maps and have a separate expert, Dr. Duchin, independently run her own analysis on the maps. Therefore, upon information and belief, Hirsch directed creation of the maps before November 4 in an effort to discredit whatever maps the General Assembly ultimately passed. Accordingly, Hirsch cannot escape serving as a fact witness and deponent in this matter under the guise of the attorney-client privilege.

B. Even if the attorney-client privilege applies NCLCV Plaintiffs have waived the privilege.

North Carolina Courts use a "fairness balancing approach in which subject matter waiver is applied for remedial, rather than punitive, purposes." *Window World of Baton Rouge, LLC,* 2019 NCBC Lexis 54, at *37 (quoting *Technetics Grp. Daytona, Inc. v. N2 Biomedical, LLC,* 2018 NCBC Lexis 116, at *15-16 (N.C. Super. Ct. Nov. 8, 2018)). Under the fairness balancing approach "when a party reveals part of a privileged communication to gain an advantage in litigation, the party waives the attorney-client privilege as to all other communications related to the same subject matter." *United States v. Jones,* 696 F.2d 1069, 1072 (4th Cir. 1982).

Here, assuming Hirsch's participation and leadership in the drafting of the Optimized Maps is privileged, it is unquestionable that NCLCV Plaintiffs have "revealed part of a privileged communication to gain an advantage in litigation." *Id.* Indeed, one need look no further than NCLCV Plaintiffs' Verified Complaint wherein NCLCV Plaintiffs' entire requested relief rests on the notion that NCLCV Plaintiffs' Optimized Maps are optimal, fair, and more appropriate than Legislative Defendants' maps. *See* NCLCV Plaintiffs' Verified Complaint, ¶¶ 7, 9, 93, 94, 96–97, 99, 104(a), 105(b), 108–09, 113, 118–119, 121–23, 125, 137–138, 140, 144(a), 145(b), 146(c), 147, 149, 153–80, 189–90. Thus, Plaintiffs have waived "the attorney-client privilege as to all other communications related to the same subject matter." *Jones* at 1072.

IV.   **The information sought is crucial to the case and the interests of justice require disclosure.**

As set forth herein and in Legislative Defendants' prior motion to compel, the information sought regarding the creation of the Optimized Maps is crucial to Legislative Defendants' defense. Moreover, the interests of justice in this extraordinary case merit discovery into Hirsch's instructions and communications relate to the creation of the Optimized Maps. *See Mims v. Wright*, 157 N.C. App. 339, 578 S.E.2d 606, 609 (2003) (providing that relevant, privileged information is not discoverable "unless the interests of justice outweigh the protected privilege") (internal quotation omitted). Despite seeking the extraordinary relief of replacing the Enacted Plans with the Optimized Maps by judicial fiat, NCLCV Plaintiffs have been troublingly secretive about the origins, purpose, and process of preparing the Optimized Maps. Both Legislative Defendants and North Carolina voters deserve access to this information, information that can only be provided by Hirsch as the individual who directed the drawing of the Optimized Maps. The need of both the parties and the public in obtaining the information held exclusively by Mr. Hirsch is too great to countenance Mr. Hirsch hiding behind a questionable assertion of attorney-client privilege. Accordingly, the interests of justice outweigh the alleged privilege, and the Court should permit the deposition to move forward as noticed.

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<u>CONCLUSION</u>

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WHEREFORE, for the reasons set forth above, Legislative Defendants respectfully request this Court enter an order:

1. Clarifying, procedurally, if this Court's November 30, 2021 Order granting the Motion for Admission *Pro Hac Vice* of Sam Hirsch subjects Hirsch to the civil jurisdiction of this Court and allows Hirsch's deposition to be noticed and taken by Legislative Defendants; OR, IN THE ALTERNATIVE,

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2. Compelling Hirsch to sit for a deposition in this matter and testify at trial.

Respectfully submitted, this the 29th day of December, 2021.

/s/ Phillip J. Strach

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CERTIFICATE OF SERVICE

It is hereby certified that on this the 29th day of December, 2021, the foregoing was served on the individuals below by email:

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Exhibit A

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December 23, 2021

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BY ELECTRONIC UPLOAD

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Re: Production of Documents and Information Pursuant to December 20 Court Order

Dear Counsel:

Pursuant to the December 20, 2021 Order of the Superior Court in case number 21-CVS-015426, enclosed is a production on behalf of Plaintiffs the North Carolina League of Conservation Voters, Inc. et al. ("the NCLCV Plaintiffs"). These files are being produced via electronic file transfer, and a password will be provided under separate cover.

Please note that this letter and all files produced as part of this production are designated as "CONFIDENTIAL" within the meaning of, and subject to, the Protective Order entered by the Superior Court dated December 15, 2021. These materials comprise competitively sensitive or proprietary information, research and analysis, development and/or commercial information, and are otherwise protected from disclosure. Counsel are advised that under the Protective Order, this letter and all produced materials "shall be used by the Parties solely in connection with this litigation" and may not be used for any "political, business, commercial, competitive, personal, governmental, or other purpose or function whatsoever, and such information shall not be disclosed to anyone" except as provided by the Protective Order. For avoidance of doubt, all information produced as part of this production shall be considered "CONFIDENTIAL" even if not individually labeled or otherwise designated as such.

The Court's December 20 Order requires the NCLCV Plaintiffs to "produce to the Legislative Defendants the method and means by which the Optimized Maps were formulated and produced,

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including, but not limited to all source code, source data, input parameters, and all outputted data associated with the Optimized Maps," and to "further identify any and all persons who took part in drawing or participated in the computerized production of the Optimized Maps."

The NCLCV Plaintiffs do not intend to offer evidence at trial about how these maps were created. Instead, the NCLCV Plaintiffs intend to rely on them to demonstrate the error in your clients' argument that the Enacted Plans' extreme partisan bias was inevitable. We therefore refer to them below as "the NCLCV Plaintiffs' demonstrative maps."

The NCLCV Plaintiffs' demonstrative maps were formulated and produced through the following method and means:

1. The process began with the compilation of source data relevant to congressional, senate, and house redistricting for the state of North Carolina. The data sources were public demographic data from the United States Census Bureau's decennial census and American Community Survey, public historical electoral data from the North Carolina State Board of Elections, and shapefiles reflecting geographic and political-subdivision boundaries that form the base layers for districting and provide the means to translate data from one geographic unit (e.g., Census blocks or 2012 precincts) to another (e.g., 2020 VTDs).

2. The demographic, electoral, and geographic data was then organized into data sets. This involved the creation of computer scripts to compile source data and to analyze source data for use in map-optimization. For example, North Carolina State Board of Elections electoral data and demographic data were analyzed using ecological-inference tools to determine which candidates were preferred by voters from various demographic groups. Also, electoral and American Community Survey data was pro-rated onto blocks and VTDs using such scripts.

3. After the data sets were compiled, for each of the congressional, senate, and house maps, a script was used to generate a random "seed" map that complied with certain basic criteria—such as contiguous districts—as a starting place for further analysis.

4. The random seed map was only a starting point for a long chain of maps in a multi-objective "short burst" process. In general, the computer script many times a minute randomly identified two adjoining districts, erased the boundary between those two districts to temporarily create a double-size district, and then randomly re-split that double-size district into two contiguous and roughly equally populated new districts. The chain took a series (a "short burst") of random steps, evaluated all the plans it encountered, and then chose from among the best plans so far to start its next short burst. Over the course of many steps, the maps thus changed dramatically. The source code that evaluated the plans to determine the "best" starting point for the next short burst used input parameters that incorporated key legal requirements that apply to North Carolina redistricting such as population balance, contiguity, respect for counties, geographic compactness, minority electoral opportunity, and partisan fairness. Over time, the chain tended to find maps that performed increasingly better on these various criteria. Chains were also run with different

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parameters simultaneously, to identify the best available map. For congressional districts, the chains ran statewide. For senate and house districts, chains were confined to a particular "county cluster," given the North Carolina Supreme Court's interpretation of the North Carolina State Constitution's Whole County Provisions.

5. To allow the computer to robustly explore alternative possibilities, the chains just described tolerated maps with population deviations that somewhat exceeded the limits under the "one person, one vote" doctrine. So once high-performing maps were identified by these short-burst chains, they were analyzed and slightly revised with QGIS (quantum geographic information system) software to ensure, among other things, that districts' populations satisfied mandatory equal-population rules. The map was then further analyzed, and districts were numbered to facilitate comparison with the enacted districting plans.

All computer scripts, source code, source data, input parameters, and outputted data referenced in this letter are included in the produced material. NCLCV Plaintiffs hereby produce to Legislative Defendants NCLCVP_LD_01000–NCLCVP_LD_01903. To facilitate your review, we have organized these documents into six categories:

1. **Documents Related to Data Gathering (NCLCVP LD 01000–NCLCVP LD 01552):** These documents include raw and processed data drawn from public sources, such as the United States Census Bureau and the North Carolina State Board of Elections, typically in the form of .csv or .txt data files. Several files, for instance, reflects data from elections by voting tabulation district, or VTD. This also includes certain files that reflect geographic data. For example, several files reflect the geography of North Carolina voting tabulation districts, or VTDs. These documents also contain computer scripts that were used in data analysis to pull and initially arrange data from publicly available sources.

2. **Documents Related to Data Organization (NCLCVP LD 01553– NCLCVP LD 01673):** These documents include additional shapefiles and scripts used to organize and calibrate data beyond initial data gathering and preparation. They also include scripts used to analyze North Carolina State Board of Elections electoral data and demographic data, using ecological-inference tools, to determine which candidates were preferred by voters from various demographic groups. See, for example, NCLCVP_LD_1586–NCLCVP_LD_1673.

3. **Documents Related to Initial Map Generation (NCLCVP LD 01674– NCLCVP LD 01690):** These documents include the script, as well as associated data and shapefiles, created to find initial random "seed" maps that complied with certain basic criteria, such as contiguous districts.

4. **Documents Related to the Multi-Objective Optimization Process (NCLCVP LD 01691–NCLCVP LD 01764):** These files pertain to the process of conducting the randomized map-generating process. NCLCVP_LD_1699 is the central

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script that was used to generate the randomized process. Other scripts in this Bates range support this process, and the remaining files include input files that provide input parameters encompassing key legal requirements that apply to North Carolina redistricting.

5. **Documents Related to Population Balancing (NCLCVP LD 01765–NCLCVP LD 01812):** These files are related to the process of balancing population and making other corrections using the maps generated from the multi-objective optimization process. These include QGIS files associated with the population-balancing process. See NCLCVP_LD_1787–NCLCVP_LD_1812.

6. **Documents Related to Outputted Maps (NCLCVP LD 01813–NCLCVP LD 01903):** An automated process generated analyses for the final outputted maps. The results of these analyses are reflected in these files. These include the block-assignment files for the NCLCV Plaintiffs' demonstrative maps, which allow anyone with redistricting software (including both commercial software and software that is available for free on the Internet) to upload and analyze the maps. We have previously provided these block-assignment files to you.

Sam Hirsch, a partner in Jenner & Block LLP's Washington office, directed the drawing and computerized production of the NCLCV Plaintiffs' demonstrative maps. Mr. Hirsch was assisted solely by two consulting experts, Amariah Becker of A Becker Consulting LLC and Dara Gold of Dara Gold LLC, who were retained or specifically employed to assist counsel in providing legal advice to the NCLCV Plaintiffs in anticipation of litigation or to prepare for trial and who are not expected to be called as witnesses during trial. These are all of the individuals who took part in drawing or participated in the computerized production of the NCLCV Plaintiffs' demonstrative maps.

With respect to this information, NCLCV Plaintiffs reserve all rights under, and do not waive any protections of, the Court's December 15, 2015 Protective Order, nor do they waive the protections of any and all other applicable privileges and protections. NCLCV Plaintiffs note that pursuant to that Order, any non-party witness must agree by affidavit, declaration, or sworn statement before the Court, that he or she has agreed to be bound by the Court's Protective Order. Pursuant to Paragraph 10(c) of the Protective Order, if you disclose, summarize, or otherwise make available this Confidential Information in whole or in part to any consulting or testifying expert retained by you for purposes of this litigation, we will require that you first provide the NCLCV Plaintiffs with copies of the executed "Exhibit A" to the Protective Order.

Best regards,

/s/ Zachary Schauf

Zachary Schauf

Enclosures